Submitted Via Email

April 14, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Rule to Amend Regulation Z (Truth in Lending) to Implement Provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that Go Into Effect on August 22, 2010 [Docket No. R-1384]

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Federal Reserve's proposed rule to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) that go into effect on August 22, 2010. ICBA has some concerns with these proposed provisions and urges the Federal Reserve to

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

carefully consider our comments when drafting the final rules required by the Credit CARD Act.

In particular, ICBA understands the need for greater protection for consumers, especially from the larger credit issuers who have been driven only by profits and not customer service. In writing final rules to implement the Credit CARD Act, we urge the Federal Reserve to remember that community banks are common-sense lenders that offer credit cards on fair terms consistent with their commitment to providing valuable services to their customers.

Also, ICBA urges the Federal Reserve to understand that penalty fees are currently quite understandable by consumers, as opposed to penalty APRs which can be confusing. These fees are designed to offset the cost of certain behavior by consumers (i.e., late payments on accounts) and are also geared to deterring consumers from falling into bad habits, such as becoming delinquent on their accounts. Therefore, there is a solid purpose for these fees which we hope will not be undermined by any final rules.

Furthermore, while ICBA understands that most of these proposed regulatory changes are mandated by statute, we urge the Federal Reserve to carefully consider the compliance resources and staff of community banks when finalizing the regulatory requirements. While there is no one proposed regulatory change that in itself would severely affect a community bank's credit card business, the cumulative regulatory and compliance burden of these proposed amendments, along with the final credit card provisions that became effective in August 2009 and February 2010, may cause community banks to exit the credit card business altogether. The result would then be fewer credit card options for consumers and a greater anti-consumer concentration of the market share for the larger issuers.

Statutory Requirements

The Credit CARD Act provides that "[t]he amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation. The Act directs the Federal Reserve to issue rules that "establish standards for assessing whether the amount of any penalty fee or charge . . . is reasonable and proportional to the omission or violation to which the fee or charge relates."

The Credit CARD Act also requires creditors that increase an annual percentage rate (APR) applicable to a credit card account, based on the credit risk of the consumer, market conditions or other factors, to periodically consider changes in such factors and determine whether to reduce the APR. Creditors are required

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to perform this review no less frequently than once every six months, and must maintain reasonable methodologies for this evaluation. The statute requires creditors to decrease the APR that was previously increased if a reduction is indicated by the review, but no specific amount of reduction in the rate is required. This provision is effective August 22, 2010, but requires creditors to review accounts on which an APR has been increased since January 1, 2009.

Summary of Comments

ICBA's specific comments included in this letter can be summarized as follows:

- ICBA opposes the option that penalty fees can be based on the total costs incurred by the creditor unless this option is amended to allow creditors to consider the costs associated with losses or the cost of holding reserves against losses, and creditors are given the option to make cost determinations based on industry standards.

- ICBA opposes the option that penalty fees can be based on an amount necessary for deterrence of the type of violation, as there is no quantifiable way to determine what amount would deter consumers from committing violations on their accounts and it does not appear that it would be possible for a community bank to develop such a model that would be in compliance with the proposed rule. If this option is included in the final rule, ICBA urges the Federal Reserve to allow financial institutions to use models developed by third parties.

- ICBA favors a safe harbor option that would allow creditors to impose a dollar amount per violation, such as not less than $25 per violation, with no limitations on the amount of individual penalty fees that can be imposed on customers. This would be preferable to a set percentage of fees based on the minimum payment amount or daily fees.

- ICBA supports a review of credit card accounts, but requests that the six-month review of accounts be required for only those accounts that are not affected by the Credit CARD Act provisions that became effective on February 22, 2010 (accounts that incurred rate increases during January 1, 2009 – February 22, 2010).

- ICBA urges the Federal Reserve to require six-month reviews of credit card accounts that received a rate increase for only two years after the increase took place.

- ICBA urges the Federal Reserve to require that any rate reductions after a review on a credit card account occur no later than 60 days after completion of the reevaluation.

- ICBA supports the Federal Reserve's proposed provisions to allow creditors to base reviews of accounts either on the same factors on which the earlier rate increase was based or on the factors currently considered by the creditors to price such accounts.

- ICBA asks that the Federal Reserve provide some guidance that would be optional for creditors to follow in gauging what would be a reasonable review of a credit account, to assist community banks in insuring compliance with the regulatory requirements.

- ICBA asks that the Federal Reserve allow for compliance with any final rules to be the latter of August 22, 2010, or six months after publication in the Federal Register.

Reasonable and Proportional Penalty Fees – § 226.52(b)

The proposed rule states that a creditor would be prohibited from imposing a penalty fee unless the dollar amount of the fee is based on one of the following: (1) the total costs incurred by the creditor; (2) deterrence of violations by cardholders or (3) a safe harbor established by the Federal Reserve. Under the proposed rule, a creditor would not be permitted to consider both costs incurred and deterrence of violations.

Total Costs

An issuer would be permitted to base its penalty fee amount on "total costs" incurred. Factors relevant to this determination would include the number of violations of a particular type experienced by the creditor during a specified period of time; costs incurred by the creditor during that time period as a result of those violations and at the creditor's option, a creditor could make reasonable estimates of changes in the number of that type of violation and the resulting changes in costs. Creditors would not be permitted to consider the costs associated with losses or the cost of holding reserves against losses in determining the total costs incurred. In addition, a creditor could not make its determinations based on industry standards, but must use its own specific costs.

ICBA Comments:

ICBA opposes this option for several reasons. First, it is very difficult for smaller creditors, such as community banks, to determine the exact amount of total costs for every type of penalty that may occur, because not all costs are the same amount for all creditors. The cost of a particular penalty often depends on the use of the card by the consumer and the type and number of penalties that a particular consumer has incurred. In short, there are too many factors to effectively determine the exact amount of costs per penalty.

Second, the fact that creditors would not be able to use an industry-wide model to make the total costs determinations but must use their own model extends a big advantage for the larger issuers that already likely have these models in place. To develop such a model would require resources that community banks do not have, thereby making this option cost prohibitive.

In addition, this option would be problematic for community banks because cost of funds and costs associated with collection and losses could not be considered when determining the costs amount, which puts creditors at a safety and soundness risk. Charge-off costs are a result of customer behavior that is not within creditors' control. If creditors are not allowed to base fees on these costs incurred, then they will be forced to make up this loss of income in other ways, such as greater costs to consumers for basic use of credit card accounts and higher APRs. This result would contradict the spirit and intent of the Credit CARD Act.

If this option is finalized, ICBA urges the Federal Reserve to allow creditors to consider the costs associated with losses or the cost of holding reserves against losses in determining the total costs incurred, and to give creditors the option to make cost determinations based on industry standards instead of only their own specific costs.

Deterrence of Violations

A creditor also would be permitted to base its penalty fee on the amount necessary for deterrence of the particular type of violation. The dollar amount of the penalty fee must be the lowest amount reasonably necessary to deter that type of violation. For this alternative, the model would have to be an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations.

ICBA Comments:

This option is also difficult to determine, because consumers may be deterred by different violation or penalty amounts. Considering consumer behavior, there is no quantifiable way to determine what would deter consumers from incurring penalty fees.

In addition, the way this proposed provision is constructed, it does not appear that it would be possible for a community bank to develop such a model that would be in compliance with the rule, thereby again putting smaller creditors at a disadvantage as with the costs option. If this option is included in the final rule, ICBA urges the Federal Reserve to allow banks to use models developed by third parties.

Safe Harbor

The proposed rule includes a safe harbor if the penalty fee amount does not exceed the greater of a specific dollar amount to be set by the Federal Reserve, or five percent of the dollar amount associated with the violation, up to a specific upper dollar amount to be set by the Federal Reserve. For example, the dollar amount associated with the violation for late fees and returned payment fees would be the required minimum payment.

ICBA Comments:

For late payments and returned payments, the proposed rule states that the dollar amount associated with the violation is the amount of the required minimum payment. However, considering that minimum payments are often a small percentage of an outstanding balance, such an amount would not be enough to deter a consumer from repeatedly incurring penalty fees on their account. This provision should instead base the penalty fee on a percentage of the outstanding balance on the account, which is a better measurement of the risk incurred by the creditor.

In addition, the Federal Reserve also proposed a safe harbor where the amount of the penalty fee would be capped by the dollar amount of the violation. For late payments and returned item fees, the fee would be capped at the amount of the minimum payment. As with the percentage safe harbor, any penalty fees should be based on the outstanding balance and not the minimum payment amount, because this is the actual risk to the creditor.

For example, it is common that a minimum payment on a consumer credit account is as low as $10, depending on the overall outstanding balance. In setting up criteria that a creditor cannot charge more than this amount, the $10 penalty fee would likely not be enough to offset the creditor's costs or deter the consumer from committing violations on their account. The result would be that creditors would raise minimum payments on credit card accounts, which would punish consumers who do pay on time and manage their credit accounts properly. These types of low fee amounts may also lead more consumers into non-payment and delinquency on their accounts, which was not the intent of the Credit CARD Act.

The Federal Reserve also proposed specifying a dollar amount that a creditor could impose for a penalty fee and remain in compliance with the rule. ICBA agrees with this approach as it would be much easier for community banks to comply with and would insure consistency in penalty fees among all creditors. Furthermore, a safe harbor dollar amount is more understandable for consumers, because the amount of the penalty would be the same amount regardless of the consumer's balance, minimum payment or transaction history. This would better allow the consumer to gauge what their potential costs would be if they paid late or incurred other penalty fees on their account.

For penalty fees to effectively offset creditor costs and also deter consumer behavior, ICBA supports a safe harbor fee of not less than $25 per penalty, with no limitations on the amount of individual penalty fees that can be imposed on customers for violations of the account terms (i.e., if a consumer pays late on their account and also has the payment returned due to non-sufficient funds, creditors should be able to charge both a late payment fee and returned payment fee, because those are different violations on the account).

ICBA does not support any implementation of daily fees, as any daily fee would likely be minimal (i.e., $5 per day) and may not be a big deterrent in motivating consumers to keep their accounts current and in compliance with the terms. In terms of better consumer understanding, a flat fee per penalty is more effective, because regardless of how the account is managed, the fee will always be the same amount. This would not be the reality for daily fees, which would not be definite and could lead to consumer surprise if they are only considering the amount of the daily fee and not the per day accumulation of daily fees on their account.

If a penalty fee amount is determined by the Federal Reserve, ICBA asks that this safe harbor dollar amount be finalized as soon as possible, so that creditors can have an early idea of how to apply these fees well before the compliance deadline. ICBA also asks that the Federal Reserve insure that any safe harbor dollar amount is high enough to include all losses incurred as a result of the penalty, including any staff and collection costs.

Reevaluation of Rate Increases - § 226.59

The proposed rule would require a creditor to review, every six months, any account where the rate has been increased since January 1, 2009. Creditors could base reviews on the same factors on which the earlier rate increase was based or the factors currently considered by the creditor to price such accounts. The proposed rule provides flexibility in connection with the review of acquired accounts and a creditor can use their own factors.

The proposed rule would also require creditors to disclose up to four principal reasons for rate increases on an account. These reasons must be listed in order of importance, there must not be more than four reasons and the reasons must be described in general terms.

ICBA Comments:

ICBA supports a review of credit card accounts, but requests that the Federal Reserve limit the six-month review of accounts to only those accounts that are not affected by the Credit CARD Act provisions that became effective on February 22, 2010. This would require creditors to review credit card account rate increases that occurred during the period of January 1, 2009 to February 22, 2010.

Because of the strong consumer protections that became effective on February 22, 2010, such as the limitations on rate increases, a review of any rate increases after this period would not be a necessary procedure for creditors.

In addition, ICBA strongly believes that six-month reviews of credit card accounts that received a rate increase should not be required after two years. Any review time after two years would not provide any special benefit to the consumer but would be a compliance burden for the creditor. If a consumer was not satisfied with their rate after a two-year period, they could always switch to a different credit card, and creditors would be aware of this potential which would compel them to provide rates that are competitive during the two year period.

The Federal Reserve also proposed that any rate reductions after a review on the account occur no later than 30 days after completion of the reevaluation. ICBA suggests that a 60-day period would be better because this amount of time would be easier for creditors to comply with, especially if a review was conducted in the middle of a billing cycle.

ICBA also supports the Federal Reserve's proposed provisions that creditors could base reviews of accounts either on the same factors on which the earlier rate increase was based or on the factors currently considered by the creditor to price such accounts. This flexibility is important for creditors who may have purchased credit card portfolios, changed their credit standards based on current market conditions or are no longer following underwriting models that were in effect a year or two ago.

Finally, while ICBA strongly supports flexible standards and providing options for creditors, we also ask that the Federal Reserve provide some guidance that would be optional for creditors to follow in gauging what would be a reasonable review of a credit account. This would assist community banks in insuring compliance with the regulatory requirements.

Period of Time to Comply with Final Regulation

ICBA strongly supports providing creditors with adequate time to comply with any final regulatory requirements, as this is especially important for community banks

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that do not have the compliance resources of the larger issuers and therefore need a greater amount of time to comply with new rules.

In particular, these proposed rules are quite substantive and would require a careful review of credit card portfolios, extensive systems changes and time to prepare and train staff and develop new policies and procedures. We ask that the Federal Reserve consider the limited resources of community banks and allow for compliance with any final rules to be the latter of August 22, 2010 or six months after publication in the Federal Register.

Thank you again for the opportunity to comment on these proposed amendments to implement the Credit CARD Act provisions effective on August 22, 2010. If you have any questions about this letter or need additional information, please do not hesitate to contact me by telephone at 202-659-8111, or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian

Vice President & Regulatory Counsel